



CHAIRMAN

Federal Communications Commission

Washington, D.C.

September 15, 2003

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SEP 29 2003

Federal Communications Commission
Office of the Secretary

The Honorable David Price
U.S. House of Representatives
2162 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Price:

Thank you for your letter of August 22, 2003, regarding the Commission's recent amendment to its rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"). In your correspondence, you express concern about the Commission's decision requiring written consent before sending advertising faxes.

On September 18, 2002, the Commission released its *Notice of Proposed Rulemaking* ("NPRM") seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. Specifically, the *NPRM* sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

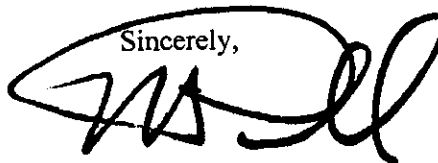
The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's *Report and Order* released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

As we explained in the *Report and Order*, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules initially were scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the *July Report and Order*, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the *Report and Order* indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. This extension, which you note in your correspondence, will allow senders of such advertisements additional time to obtain the necessary permission before the new rules become effective. In addition, it will allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue. I am enclosing a copy of the Commission's *Order on Reconsideration*, released on August 18, 2003.

I appreciate your comments. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Powell', enclosed within a large, loopy oval shape.

Michael K. Powell

Enclosure

DAVID PRICE
4TH DISTRICT
NORTH CAROLINA

COMMITTEE ON APPROPRIATIONS

TREASURY, POSTAL SERVICE
AND GENERAL GOVERNMENT

VETERANS' AFFAIRS,
HOUSING AND URBAN DEVELOPMENT
AND INDEPENDENT AGENCIES



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

August 22, 2003

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The Honorable Michael K. Powell, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Powell:

I am writing on behalf of several constituents regarding a recent Federal Communications Commission (FCC) ruling (CG Docket No. 02-278, FCC 03-153) that will limit the ability of entities to send unsolicited faxes, even to recipients with whom there is a prior business relationship.

There is particular concern among many of my constituents that the ruling will impinge upon the ability of associations to send unsolicited faxes to their members. They believe that the relationship between associations and their members are a special case and that faxes from associations to their members should be categorized as different from other unsolicited, commercial faxes.

I am aware that the FCC has delayed the effective date of the new rule as it applies to unsolicited fax communications. I applaud your actions in this regard, and I urge you to quickly review petitions for clarification and reconsideration of this aspect of the rule, giving all due consideration to the perspective of associations and others who will be affected.

Thank you again for your time and attention. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "David Price". The signature is written in a cursive, flowing style.

DAVID PRICE
Member of Congress

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